

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2551 OF 2004

Dakshali Synthetics Pvt. Ltd. & Ors.

...Petitioners.

Versus

Union of India & Ors.

...Respondents.

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Dr. Virendra Tulzapurkar i/b. M/s. M.S. Bodhanwalla & Co. for the
Petitioners.

Mr. Y. S. Bhate with Mr. Adwait Sethna for the Respondents.

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CORAM : DALVEER BHANDARI, C.J. &

DR. D.Y. CHANDRACHUD, J.

October 29, 2004.

P.C.:

The Petitioners have moved the Court, praying for a declaration that the provisions of Section 84(3) of the Multi State Co-operative Societies Act, 2002, be declared unconstitutional and void; that the arbitration proceedings instituted against the Petitioners by the Third Respondent-Bank before the Joint Registrar of Co-operative Societies, Gujarat, be quashed and set aside and that the order of appointment of the Fourth Respondent as an Arbitrator be directed to be withdrawn.

2. The Petitioners have, in pleadings before the Court, disclosed that in April 1994, the First Petitioner availed certain credit facilities from the Third Respondent at its Mandvi Branch at Mumbai, under which amounts were disbursed by the Third Respondent to the First Petitioner. Thereafter, there is a reference to arbitration proceedings which have been initiated under Section 84 of the Multi State Co-operative Societies Act, 2002. The Petition is conspicuously silent about the extent of the credit facilities that were disbursed by the Third Respondent and of the nature of the claim filed by the Third Respondent in respect of the outstandings that are due and payable. During the course of hearing, we called upon Counsel appearing on behalf of the Petitioners to disclose before the Court, the extent of the outstanding dues and to take instructions on whether the Petitioners were in a position to repay the outstandings in instalments. Learned Counsel placed on the record, a compilation containing the agreement entered into with the Bank and stated that the present claim of the Bank is to the extent of Rs.5 crores. Counsel stated, in response to a query of the Court, that the case of the Petitioners is

that they are liable to pay only such amounts as are due in accordance with the terms of the agreement. We thereupon requested Counsel to take instructions on whether the Petitioners would be willing to pay at least what according to them was due and payable. Upon taking instructions, Counsel states that the Petitioners are not ready and willing to pay anything at all.

3. We have recorded what has transpired before the Court during the course of the hearing because it shows beyond a shadow of a doubt that the petition is not a bona fide Petition but merely a ruse to delay and defer the realisation of the dues of the Third Respondent. The Third Respondent has taken recourse to its remedies under Section 84 of the Multi State Co-operative Societies Act, 2002. The contention of the Petitioners is that Section 84(3) is ultra vires in so far as it renders a decision of the Arbitrator on the question as to whether a dispute touches the constitution, management or business of a Multi State Co-operative Society as final and such that would not be called into question in any Court. We are of the view that at this stage it would be premature for this Court

to decide the question of the constitutional validity of Section 84(3). Arbitration proceedings have been initiated under the Act and we leave it open to the Petitioners to raise all appropriate defences. We also keep open the remedies of the Petitioners after the award of the Arbitrator. We see no reason to exercise our writ jurisdiction at the present stage, particularly in the light of the obdurate refusal of the Petitioners to make even a bona fide attempt to repay the outstanding dues of the Bank. The Petition shall accordingly stand dismissed.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.